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IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVID JOSEPH MEISTER,	)	
	)	**No. 44322**
Petitioner-Appellant,	)	
	)	**Latah County Case No.**
v.	)	**CV-2015-0337**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

David Joseph Meister appeals from the denial of post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

In a re-trial after his first convictions were overturned on appeal, a jury convicted Meister of first-degree murder and conspiracy to commit murder. State v. Meister, 2014 WL 861717 (Idaho App. March 4, 2014) (unpublished opinion). The Idaho Court of Appeals affirmed the conviction on direct appeal. Id. Meister initiated the current case by filing a petition for post-conviction relief. (R., vol. 1, pp. 14-31; vol. 16, pp. 3490-3506 (amended petition); pp. 3511-28 (second amended petition).) The state filed an answer.[1] (R., vol. 2, pp. 354-68; vol. 17, pp. 3540-52.)

The state also filed a motion for summary disposition. (R., vol. 17, pp. 3555-90.) The district court granted the motion, summarily dismissing the petition. (R., vol. 21, pp. 4457-72.) The district court entered judgment. (R, vol. 22, p. 4648.) Meister appealed. (R., vol. 22, pp. 4640-44, 4650-54.)

[1] The state attached many documents from the underlying criminal record to its answer. (R., vol. 2, p. 376 – vol. 16, p. 3457.)

ISSUES

Meister states the issues on appeal as:

A. Did the district court err by summarily dismissing Mr. Meister's post-conviction claims of ineffective assistance of appellate counsel?

B. Did the district court err by summarily dismissing Mr. Meister's post-conviction claims of ineffective assistance of trial counsel regarding:
   1. Trial counsels' failure to present evidence that Mr. Meister's confession was false?
   2. Trial counsels' failure to present evidence of Mr. Meister's alibi?
   3. Trial counsels' failure to present evidence of an alternative perpetrator?
   4. Trial counsels' failure to object to prosecutorial misconduct?

C. Did the district court err by summarily dismissing Mr. Meister's post-conviction claim of ineffective assistance of trial counsel Thomas Whitney for introducing prejudicial evidence?

D. Did the district court err by summarily dismissing Mr. Meister's post-conviction claim that the district court had erred by limiting Dr. Ofshe's testimony?

E. Did the district court err by summarily dismissing Mr. Meister's post-conviction claim that the jury room was not sufficiently insulated from sound generated in the courtroom?

F. Did the district court err by summarily dismissing Mr. Meister's post-conviction claim of cumulative error at trial?

G. Did the district court err by denying Mr. Meister's motion for discovery?

(Appellant's brief, p. 9.)

The state rephrases the issues as:

1. Did the district court properly dismiss Meister's claims of ineffective assistance of appellate counsel because Meister presented no evidence sufficient to show a material issue of fact?

2. Has Meister failed to show that the district court erred by summarily dismissing his claims of ineffective assistance of trial counsel?

3. Has Meister shown no error in the dismissal of his claim related to the rulings on the admissibility of Dr. Ofshe's testimony?

4. Has Meister shown no error in the dismissal of his claim related to whether the jury room was sufficiently sound-proofed?

5. Has Meister failed to show error in the denial of his claim of cumulative error?

6. Has Meister failed to show the district court abused its discretion when it denied his request for discovery?

ARGUMENT

I.
The District Court Properly Dismissed Meister's Claims Of Ineffective Assistance Of Appellate Counsel

A. Introduction

In the appeal from the second trial, appellate counsel raised a single issue: whether the "district court abused its discretion by limiting the testimony of Dr. Ofshe," a defense expert in voluntariness of confessions. Meister, 2014 WL 861717, at *3. The Court of Appeals affirmed the district court's ruling, finding that, even if there had been error, the error was harmless. Id. at *3-6 ("We need not address whether the district court abused its discretion in limiting Dr. Ofshe's testimony as any error would be harmless.").

Meister alleged 16 claims of ineffective assistance of appellate counsel. (R., vol. 16, p. 3512-16.) The state moved to summarily dismiss these claims on the basis that Meister did not plead or provide evidence that appellate counsel's performance was deficient or that Meister was prejudiced and, thus, failed to create a material issue of fact. (R., vol. 17, pp. 3566-68.) Meister asserted that he had presented evidence raising a material issue of fact, citing to "Petitioner's Declaration, pp. 2-43." (R., vol. 17, pp. 3618-20.) That declaration, in turn, outlined Meister's communications with his appointed appellate attorneys, the parts of the trial record Meister believed supported his claims, and the law Meister believed his counsel should have cited. (R., vol. 18, pp. 3864-97.) The district court dismissed the claims of ineffective assistance of appellate counsel because they failed to raise issues of material fact. (R., vol. 21, pp. 4461-62.)

On appeal Meister argues the district court erred by summarily dismissing claims that appellate counsel was ineffective for not raising claims that (1) the district court erred

by allowing cross-examination of Brian Keim regarding attending Odinist religious meetings with Meister; (2) the court erred by "allowing" the jury to learn of the prior trial and conviction; and (3) the court erred by "limiting Dr. Richard Ofshe's expert testimony." (Appellant's brief, p. 4.) Application of the correct legal standards to the facts of this case shows no error in the district court's summary dismissal of claims of ineffective assistance of appellate counsel.

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court "will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party." Kelly v. State, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010).

C. Meister Has Shown No Error In The Summary Dismissal Of His Claims Of Ineffective Assistance Of Appellate Counsel

Post-conviction proceedings are governed by the Uniform Post-Conviction Procedure Act. I.C. § 19-4901, *et seq*. Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party's motion or on the court's own initiative, if the applicant "has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). "Allegations contained in the application are insufficient for the granting of relief when (1) they are clearly disproved by the record of the original proceedings, or (2) do not justify relief as a matter of law." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007).

In order to establish a claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989). With respect to the deficient performance prong, the United States Supreme Court has articulated the defendant's burden under Strickland as follows:

> To establish deficient performance, a person challenging a conviction must show that counsel's representation fell below an objective standard of reasonableness. A court considering a claim of ineffective assistance must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. The challenger's burden is to show that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment.

Harrington v. Richter, 562 U.S. 86, 104 (2011) (citations and quotations omitted). To establish prejudice, a defendant must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Richter, 562 U.S. at 104. "[W]e use the same test to evaluate ineffective assistance of appellate counsel on direct appeal as we use to evaluate ineffective assistance of trial counsel." Dunlap v. State, 159 Idaho 280, 296, 360 P.3d 289, 305 (2015).

"Thus, in order to survive a motion for summary dismissal, post-conviction relief claims based upon ineffective assistance of counsel must establish the existence of material issues of fact as to both *Strickland* prongs." Id.

Application of these standards shows no error in the district court's order summarily dismissing Meister's claims of ineffective assistance of appellate counsel. Specifically, Meister submitted nothing relevant other than the appellate record in support of his claims. He submitted no evidence that counsel was ignorant of the law, failed to adequately prepare, or spent inadequate time reviewing the appeal before deciding what

issues to raise. Meister requested the court to effectively infer an objective shortcoming and prejudice from a naked appellate record. Because there is no evidence supporting a claim of ineffective assistance of appellate counsel, and because no contested issue of fact may be drawn from the naked appellate record, the district court did not err by summarily dismissing the claims of ineffective assistance of appellate counsel.

1. Meister's Claim Of Ineffective Assistance Of Appellate Counsel For Not Challenging The Trial Court's Ruling On Cross-Examination Of Keim Was Properly Dismissed

Meister alleged his appellate counsel was ineffective for failing to "present and argue the trial court's error in admitting evidence of Petitioner's religion" (R., vol. 16, p. 3512) and "present and argue that [the prosecutor] was improperly permitted to testify at trial that Petitioner (by virtue of his preferred religion) denies the existence of sin, denounces contrition, and regards the capacity for remorse as a weakness" (R., vol. 16, p. 3513). In support of these claims Meister cited to the trial transcript where the state was allowed to cross-examine a defense witness, Brian Keim (who testified that Lane Thomas admitted committing the killing Meister was accused of), regarding Keim's relationship with Meister through "Odinist religious classes" they attended together, and about how the beliefs espoused by practitioners of that religion might lead to loyalty to each other. (R., vol. 18, pp. 3868-71.)

The record shows that Meister presented Keim as a witness, under oath and outside the presence of the jury, where he testified that he knew Meister through attending Odinist religious classes together for about three years and, as a tenet of the religion, he owed Meister a certain amount of loyalty. (R., vol. 15, pp. 3283-3289 (Tr., vol. 5, p. 3547, L. 23 – p. 3553, L. 18; p. 3565, L. 11 – p. 3572, L. 17).) The district court overruled the objection

that Meister would be prejudiced because "strong Christians" on the jury might have "very strong feelings" and might "tend not to tolerate any other form of worship or religion." (R., vol. 15, pp. 3290-3291 (Tr., vol. 5, p. 3578, L. 9 – p. 3581, L. 12).) The prosecutor then elicited testimony in cross-examination before the jury that Keim attended Odinistic classes with Meister and felt he owed a duty of loyalty to "people that have the same beliefs." (R., vol. 15, p. 3299 (Tr., vol. 5, p. 3611, L. 19 – p. 3613, L. 5).)

There is no evidence that appellate counsel's decision to not pursue this issue on appeal was objectively unreasonable. Pursuant to I.R.E. 403, relevant evidence may be excluded if, in the district court's discretion, the danger of unfair prejudice—which is the tendency to suggest a decision on an improper basis—substantially outweighs the probative value of the evidence. State v. Ruiz, 150 Idaho 469, 471, 248 P.3d 720, 722 (2010); State v. Floyd, 125 Idaho 651, 654, 873 P.2d 905, 908 (Ct. App. 1994); State v. Nichols, 124 Idaho 651, 656, 862 P.2d 343, 348 (Ct. App. 1993). To show error appellate counsel would have to have shown an abuse of discretion in the trial court's weighing of probative value against the danger of unfair prejudice. State v. Johnson, 148 Idaho 664, 666, 227 P.3d 918, 920 (2010). As noted above, the only danger of unfair prejudice identified by trial counsel was speculation that if there were strong Christians on the jury they might feel very strongly about Meister's participation in a pagan religion, a danger the trial court did not find significant. The district court did not err when it concluded Meister had failed to present evidence showing a prima facie claim that appellate counsel's tactical decision to not raise this claim was objectively unreasonable or that Meister was prejudiced thereby.

The prosecutor also asked, without objection, if in Odinistic belief "sin is denied and contrition is denounced" and "Odinists see repentance as a mark of weakness." (R.,

vol. 15, p. 3299 (Tr., vol. 5, p. 3613, Ls. 17-19).) Keim answered that he did not "know about that" but explained that sin was "generally" a Christian, Jewish or Muslim belief, and that an Odinist's "idea of sin has to do with violating the Nine Noble Virtues." (R., vol. 15, p. 3299 (Tr., vol. 5, p. 3613, L. 20 – p. 3614, L. 3); see also R., vol. 15, p. 3295 (Tr., vol. 5, p. 3596, Ls. 1-20 (the "Nine Nobel Virtues" are "courage, truth, honor, discipline, self-reliance, perseverance, fidelity, hospitality and industriousness")); R., vol. 16, p. 3301 (Tr., vol. 5, p. 3622, Ls. 13-15).)

If these questions, which were not objected to at trial, were raised as claims of error on appeal, appellate counsel would have to have shown fundamental error. State v. Perry, 150 Idaho 209, 227, 245 P.3d 961, 979 (2010) ("When prosecutorial misconduct is not objected to at trial, Idaho appellate courts may only order a reversal when the defendant demonstrates that the violation in question qualifies as fundamental error."). There was no fundamental error here because there was no constitutional violation, no clear error on the record, and no prejudice. Because this appellate claim lacked merit, there was neither deficient performance nor prejudice.

Finally, after the trial Meister moved for a new trial on the basis that the evidence of his and Keim's Odinism violated I.R.E. 610. (R., vol. 21, pp. 4561-4563.) The state argued that I.R.E. 610 did not apply to the evidence because it was used to show bias, not that Keim was more or less likely to speak truthfully because of his religious beliefs. (R., vol. 22, pp. 4578-4579.) This motion was denied by the district court. (R., vol. 22, p. 4582.) The reason for the district court's denial of the motion is not shown in this record. Because this objection was not timely raised, however, and because the state argued that the evidence was properly admitted to show bias, and not improperly admitted to show the

nature of the beliefs impaired Keim's credibility, there is nothing in the record suggesting an objective shortcoming of appellate counsel and no reason to believe there was prejudice.

On appeal Meister argues the district court erred in summarily dismissing his claim because he had demonstrated a prima facie claim of ineffective assistance of appellate counsel. (Appellant's brief, pp. 4-7.) Meister first argues that appellate counsel should have claimed error in the admission of "evidence of Mr. Meister and Mr. Keim's practice of a pagan, racist religion—which seemingly denounces moral conventions" under I.R.E. 403. (Appellant's brief, p. 5.) This argument, however, is unsupported by the record. As set forth above, Meister's trial counsel did assert unfair prejudice from the non-Christian nature of the religion, and the district court overruled that objection. Moreover, the claim there was evidence that Odinism "denounces moral conventions" finds no support in the record, which shows that the prosecutor *asked* (without objection) about Odinism's concept of sin, contrition and repentance, and the witness explained that Odinism seeks the "Nine Nobel Virtues" of "courage, truth, honor, discipline, self-reliance, perseverance, fidelity, hospitality and industriousness." (R., vol. 15, p. 3295 (Tr., vol. 5, p. 3596, Ls. 1-20); R., vol. 16, p. 3301 (Tr., vol. 5, p. 3622, Ls. 13-15).) Meister has shown no deficient performance in appellate counsel's election to not raise a challenge to the district court's broad discretion in weighing the danger of unfair prejudice arising from "strong Christians," which may or may not describe any of the jurors, being unfairly prejudiced against a pagan religion against the probative value that the religious bond of loyalty between Keim and the Defendant showed a bias and possible motive to fabricate or embellish.

Finally, Meister asserts that testimony "that Odinism often caters to white racists" should have led to this issue being raised on appeal and, ultimately, a finding of reversible error. (Appellant's brief, p. 5.) This argument is highly misleading. The references to racists or racism in the portion of the record cited by Meister are as follows:

> Q [by the prosecutor]. Now in your interaction with Mr. Thomas[2] he was asking you questions about Odinism right?
>
> A. Well, he was telling me stuff about it. I was—I was writing—I was practicing writing in Runes, because I'm sitting in this little county jail with nothing to do, so I just started practicing writing in Runes.
>
> And he saw me doing that, and that was what—that was what got his attention to me in the first place, you know. I mean, that's what brought him to me to talk to me. And he said he was—he knows about that stuff too, and he was doing it in prison, too.
>
> And when I came back to prison after being out on parole, I didn't—I decided not to go to the Odinist meetings anymore.
>
> Q. Okay. But my question was, did you tell him about Odinism?
>
> A. Well, we talked a little bit about it, yeah.

(R., vol. 15, p. 3299 (Tr., p. 3614, Ls. 4-23).)

> Q [by the prosecutor]. Anyone else around when Lane made this statement to you?
>
> A. No. He wouldn't talk to anyone else because it was mostly Mexicans on that tier, and he hates anybody that's not white. And because I'm into Odinism, he had this belief that I had shared these same feelings with him. And he basically just talked to me and that was it. So…

(R., vol. 16, p. 3300 (Tr., p. 3616, L. 22 – p. 3617, L. 4).)

The record thus establishes that, after the district court made its ruling on admissibility, Keim volunteered the testimony about racism and asserted that it was Thomas, as opposed to him or Meister, who was the racist. The record further establishes

[2] Keim testified that Lane Thomas confessed to him that he committed the murder Meister was charged with. (R., vol. 15, pp. 3295-96 (Tr., p. 3596, L. 24 – p. 3600, L. 5).)

that Meister offered no objection to the volunteered testimony. Thus, again, the issue would have to have been raised as fundamental error, without support for that argument in the record. The record does not support Meister's claim that appellate counsel was ineffective for not claiming error on appeal because of this testimony.

2. Meister's Claim Of Ineffective Assistance Of Appellate Counsel For Not Asserting The Jury Was Presented With "Inappropriate Evidence" Was Properly Dismissed

Meister alleged appellate counsel was ineffective for failing to "present and argue that the numerous references to the Petitioner's first trial and conviction denied him a fair second trial." (R., vol. 16, p. 3513.) Specifically, he claimed that the district court's pre-trial order that "all prior criminal proceedings" be referred to as "'prior proceedings'" was violated when witness Keith Wilde mentioned the "'last trial'" and witness Scott Mikolajczyk mentioned testifying to "'the grand jury years ago.'" (R., vol. 17, pp. 3632-33.) He further asserted that Keim's testimony that he knew Meister because they had been incarcerated together was improperly admitted. (R., vol. 17, pp. 3633-34.) The district court dismissed this claim for failure to raise a material issue of fact on either the deficient performance or prejudice prongs of *Strickland*. (R., vol. 21, pp. 4461-62.)

On appeal Meister argues the jury "had been presented with inappropriate evidence that Mr. Meister spent a number of years in prison because at some point he was previously convicted of the murder of Tonya Hart." (Appellant's brief, p. 7.) The parts of the trial transcript he cites to are: (1) Keith Wilde, when asked how long it was after he heard the shots that he called 9-1-1, volunteered that he had "been asked this many times" and "in the last trial, I stated it was from five to six minutes" (R., vol. 12, p. 2578 (Tr., p. 932, Ls. 5-8)); (2) Keim's testimony on direct examination by defense counsel that, while they were

both in prison, he and Lane Thomas discussed the murder and Thomas admitted committing it and stated he was not worried about being convicted for it because "Meister got convicted of this crime" (R., vol. 15, p. 3295 (Tr., p. 3596, L. 24 – p. 3598, L. 23)) and in cross-examination by the state that Thomas had claimed Meister had testified before a grand jury and claimed Thomas had committed the crime (R., vol. 15, p. 3298 (Tr., p. 3608, Ls. 9-24)); and (3) Deputy Mikolajczyk's testimony in cross-examination that he did not prepare a police report but first reported his role in the investigation when he testified at the "grand jury trial years ago" (R., vol. 12, p. 2630 (Tr., p. 1143, Ls. 20-24)). (Appellant's brief, p. 7.) Meister argues appellate counsel should have argued that admission of evidence of his prior conviction violated his due process rights. (Id.)

However, the only testimony about a prior conviction was Keim's testimony about Thomas's hearsay statement that Meister was convicted (and therefore Thomas did not fear conviction), which testimony was *elicited by Meister's trial counsel*. (Appellant's brief, p. 7 (citing (R., vol. 15, p. 3295 (Tr., p. 3596, L. 24 – p. 3598, L. 23))).) There were mentions of prior trial and grand jury proceedings, but none with a contemporaneous objection.[3] The argument that appellate counsel was ineffective for not claiming that Meister's due process rights were violated by mention of his conviction, where the evidence of his conviction was admitted by his trial counsel, is meritless. See State v. Lankford, 162 Idaho 477, 399 P.3d 804, 813 (2017) ("Idaho law has clearly distinguished

[3] Meister filed a motion for a mistrial after Deputy Mikolajczyk testified, citing his testimony regarding testifying at the grand jury as one of the alleged errors warranting a mistrial. (R., vol. 21, pp. 4499-4503.) The state responded. (R., vol. 21, pp. 4510-4515.) The district court denied the motion. (R., vol. 21, pp. 4526-32.) The district court concluded that mentions of the grand jury and testifying at the prior trial were not prejudicial and did not deprive Meister of a fair trial. (R., vol. 21, Ls. 4531-32.)

between the mention of a previous trial and the mention of a previous conviction."); State v. Watkins, 152 Idaho 764, 766, 274 P.3d 1279, 1281 (Ct. App. 2012) ("We are not persuaded that [the mention of a prior trial and an appeal] is equivalent to the disclosure that a previous jury had found him guilty."). See also State v. Abdullah, 158 Idaho 386, 420–21, 348 P.3d 1, 35–36 (2015) ("It has long been the law in Idaho that one may not successfully complain of errors one has acquiesced in or invited. Errors consented to, acquiesced in, or invited are not reversible." (internal quotation omitted)).

3. Meister's Claim Of Ineffective Assistance Of Appellate Counsel For Not Asserting Federal Claims On Appeal Was Properly Dismissed

On appeal in the criminal case, appellate counsel argued the district court erred by limiting the testimony of Dr. Ofshe regarding the voluntariness of Meister's confession. Meister, 2014 WL 861717, at *1-2. Meister alleged in post-conviction that appellate counsel was ineffective for failing to "federalize the issue raised on appeal." (R., vol. 16, pp. 3515-16.) Meister has failed to show that federal claims regarding this issue were preserved for appellate review. (Appellant's brief, pp. 7-8.) He has failed to show that there was a federal constitutional right to present evidence regarding his credibility. (Id.) His claim of prejudice is that he is foreclosed from making this claim in federal habeas corpus (id.), but has not claimed how such a claim of "prejudice" is relevant to the applicable legal standard of showing a likelihood that the outcome of his appeal would have been different. Meister has failed to show error in the summary dismissal of this claim.

II.
Meister Has Failed To Show That The District Court Erred By Summarily Dismissing His Claims Of Ineffective Assistance Of Trial Counsel

A. Introduction

Meister alleged several claims of ineffective assistance of trial counsel. (R., vol. 16, pp. 3516-25.) The district court dismissed the claims of ineffective assistance of trial counsel. (R., vol. 21, pp. 4463-70.) Among the specific claims rejected, the district court rejected claim 22, that trial counsel made the wrong argument about a late disclosure of evidence; the district court held that making the argument proposed by Meister would not have changed the outcome of the objection. (Id. at 4466-67.) The district court dismissed claim 23, alleging that counsel was ineffective both for presenting certain evidence regarding a pager number found in Meister's wallet and for failing to present different evidence regarding the same, because, although the pager evidence was featured prominently in the first trial it was not significant to the second trial. (Id. at 4467.) The district court dismissed claims 25-32, alleging trial counsel was ineffective for not objecting to actions by the prosecutor, because Meister had shown neither deficient performance nor prejudice. (Id. at 4468.) The district court also dismissed claim 33, alleging trial counsel admitted evidence prejudicial to Meister, on the basis of a lack of evidence of either deficient performance or prejudice. (Id. at 4468-69.) Finally, the district court dismissed claims 34-43, claiming that trial counsel should have introduced certain evidence, because there was no evidence of objective deficiency in counsel's strategic decisions and no evidence of prejudice. (Id. at 4469-70.)

Meister asserts the district court erred. (Appellant's brief, pp. 10-47.) Meister's second-guessing of trial counsel's tactical and strategic decisions fails to show the district

court erred by finding no evidence of deficient performance, and his generalized claims of prejudice do not substitute for evidence that the outcome of the trial would have been different.

B. Standard Of Review

"On appeal from an order of summary dismissal, we apply the same standards utilized by the trial courts and examine whether the petitioner's admissible evidence asserts facts which, if true, would entitle the petitioner to relief." Caldwell v. State, 159 Idaho 233, ___, 358 P.3d 794, 798 (Ct. App. 2015). "Over questions of law, we exercise free review." Id.

C. Meister Has Shown No Error In The Summary Dismissal Of His Claims Of Ineffective Assistance Of Trial Counsel

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief. A claim for post-conviction relief is subject to summary dismissal "if the applicant's evidence raises no genuine issue of material fact" as to each element of the petitioner's claims. Workman v. State, 144 Idaho 518, 522, 164 P.3d 798, 802 (2007) (citing I.C. § 19-4906(b), (c)). In order to establish a prima facie claim of ineffective assistance of counsel, a post-conviction petitioner must demonstrate both deficient performance and resulting prejudice. Strickland v. Washington, 466 U.S. 668, 687-88 (1984); State v. Charboneau, 116 Idaho 129, 137, 774 P.2d 299, 307 (1989).

An attorney's performance is not constitutionally deficient unless it falls below an objective standard of reasonableness, and there is a strong presumption that counsel's conduct is within the wide range of reasonable professional assistance. Gibson v. State, 110 Idaho 631, 634, 718 P.2d 283, 286 (1986); Davis v. State, 116 Idaho 401, 406, 775

P.2d 1243, 1248 (Ct. App. 1989). To establish prejudice, a defendant must show a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. Aragon v. State, 114 Idaho 758, 761, 760 P.2d 1174, 1177 (1988); Cowger v. State, 132 Idaho 681, 685, 978 P.2d 241, 244 (Ct. App. 1999).

1. Meister alleged, in claim 22, that trial counsel "failed to make proper objections to the State's presentation of an undisclosed witness at trial." (R., vol. 16, p. 3518.) The district court dismissed this claim after determining that the objections Meister claimed should have been made would not have changed the ruling on Meister's trial motion. (R., vol. 21, pp. 4466-67.) Meister argues the district court erred because it "likely would have granted the motion and excluded a major component of the State's case regarding Mr. Linderman's alleged motive." (Appellant's brief, p. 31.) Claiming that it "likely would have" granted the motion does not show error in the district court's conclusion it would not have granted the motion.

2. Meister alleged, in claim 23, that trial counsel were ineffective because they "introduced inculpatory evidence and then failed to present exculpatory evidence." (R., vol. 16, p. 3518.) The evidence was that a pager number belonging to Jesse Linderman was found in Meister's wallet. (R., vol. 21, p. 4467.) Evidence found after the first trial indicated that this number was not activated until a few weeks after the murder. (See Appellant's brief, p. 44.) The district court concluded that although discovery of the phone number was "a key piece of evidence by the State in the first trial, as it bolstered the murder for hire theory," the strategy for the second trial had changed for both parties and this evidence was not highlighted. (R., vol. 21, p. 4467.) Thus, the district court concluded,

neither deficient performance nor prejudice regarding the handling of the evidence was shown. (Id.)

Review of the record supports the district court's analysis. The evidence presented showed that Meister stated to police that when they planned the murder Linderman provided his mother's address and phone number as his contact information, and Meister may have put that information in his wallet. (R., vol. 17, p. 3586.) Trial counsel admitted evidence of the papers found in Meister's wallet upon his arrest. (R., vol. 13, pp. 2854-55 (Tr., p. 1967, L. 24 – p. 1968, L. 12; p. 1969, L. 19 – p. 1971, L. 16).) The prosecution, in redirect, elicited testimony that on one of the papers in Meister's wallet was "a phone number belonging to Jesse Linderman." (R., vol. 14, p. 2862 (Tr., p. 1999, L. 14 – p. 2000, L. 23).) Meister has claimed no other appearance of evidence of Linderman's phone number or that this evidence was mentioned in closing arguments.

On this record the district court did not err in concluding that Meister had failed to show trial counsel rendered deficient performance or that Meister was prejudiced. "It is generally agreed that the decision of what evidence should be introduced at trial is considered strategic or tactical." Bagshaw v. State, 134 Idaho 34, 38, 121 P.3d 965, 969 (Ct. App. 2005) (citation omitted). It is also well established that the "lack of objection to testimony fall[s] within the area of tactical, or strategic, decisions." Giles v. State, 125 Idaho 921, 924, 877 P.2d 365, 368 (1994). "A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." Harrington v. Richter, 562 U.S. 86, 104 (2011) (quoting Strickland, 466 U.S. at 689). "When evaluating an ineffective assistance of counsel claim, this Court does not second-guess strategic and tactical

decisions, and such decisions cannot serve as a basis for post-conviction relief unless the decision is shown to have resulted from inadequate preparation, ignorance of the relevant law or other shortcomings capable of objective review." State v. Payne, 146 Idaho 548, 561, 199 P.3d 123, 136 (2008). Because Meister presented no evidence that the tactical decisions made here were the result of any objective shortcoming, or that they resulted in prejudice, the district court correctly dismissed this claim.

Meister argues the district court erred because the jury could have concluded that the evidence of Linderman's pager number in his wallet corroborated Meister's confession to colluding with Linderman to perform the murder. (Appellant's brief, pp. 14-15, 43-45.) Of course the presence of the pager number does corroborate the statement in that it shows a connection between Meister and Linderman. Meister's argument seems to be that because the jury may have assumed that the number in Meister's wallet was Linderman's mother's number they may have given it extra corroborative weight. Meister's speculation that the jury may have been confused that the evidence that he had *Linderman's* number in his wallet meant he had *Linderman's mother's* number in his wallet shows no error by the district court.

3. Meister alleged his trial counsel were ineffective for not asserting objections to questions or arguments presented by the prosecutor. (R., vol. 16, pp. 3518-21 (claims 24-32).) The district court dismissed these claims because Meister failed to show deficient performance or prejudice. (R., vol. 21, p. 4467-68.) Meister argues the district court erred because there was "no reasonable trial strategy for defense counsel to acquiesce in the many examples of prosecutorial misconduct described above" and claims the district court

applied an incorrect prejudice standard. (Appellant's brief, p. 42.) These claims of error do not withstand analysis.

Meister claims ineffective assistance of counsel for not objecting to questions to Keim about his Odinist beliefs. (Appellant's brief, pp. 31-33.) As set forth above, the prosecutor's inquiry was proper. (Respondent's brief at I.C.1.) Even if the prosecutor's questions were potentially objectionable, the resulting evidence (that Odinists pursue the "Nine Nobel Virtues" of "courage, truth, honor, discipline, self-reliance, perseverance, fidelity, hospitality and industriousness") was not prejudicial, and perhaps helpful to the defense. (R., vol. 15, p. 3295 (Tr., vol. 5, p. 3596, Ls. 1-20); R., vol. 15, p. 3299 (Tr., p. 3613, L. 17 – p. 3614, L. 3); R., vol. 16, p. 3301 (Tr., p. 3622, Ls. 13-15).) The evidence presented, which merely shows the questions being asked without objection, does not show a prima facie claim of objective shortcoming or prejudice.

Meister next argues it was ineffective assistance of counsel to not object to the prosecutor's discussion of Meister's credibility in closing argument. (Appellant's brief, pp. 33-35.) The prosecutor argued that Meister's trial testimony was not credible when compared to his confession, evidence of his actions, physical evidence, and the testimony of other witnesses. (R., vol. 16, pp. 3412-18 (Tr., p. 3989 L. 20 – p. 4014, L. 2).) This was entirely proper. See State v. Felder, 150 Idaho 269, 273, 245 P.3d 1021, 1025 (Ct. App. 2010) (latitude in discussing evidence includes "right to express how, from that party's perspective, the evidence confirms or calls into doubt the credibility of particular witnesses"). Meister argues that the prosecutor gave her "bald opinion" without "references and contrast to testimony or other evidence from which dishonesty permissibly could be inferred." (Appellant's brief, pp. 33-34.) This argument egregiously

misrepresents the record, which literally has pages of references to the evidence supporting the prosecutor's credibility argument. This claim is at best frivolous.

Meister next argues that counsel should have objected to the prosecutor's hypothetical question, asked in rebuttal closing in relation to conflicting testimony regarding what happened during the unrecorded part of Meister's police interview: "Again, who has the most incentive to be dishonest about what happened?" (R., vol. 16, p. 3432 (Tr., p. 4067, L. 22 – p. 4069, L. 18); Appellant's brief, pp. 34-35.) This was a proper argument. State v. Ehrlick, 158 Idaho 900, 928, 354 P.3d 462, 490 (2015) ("In a closing argument, the parties are entitled to explain how, from their own perspectives, the evidence confirms or calls into doubt the credibility of particular witnesses." (internal brackets and quotes omitted)). Meister contends the prosecutor was improperly arguing that in order to find Meister not guilty, the jury would have to conclude the officers were lying. (Appellant's brief, pp. 34-35.) This argument is facially frivolous; therefore it was not ineffective for trial counsel to refrain from making it.

Meister next argues that his trial counsel was ineffective for not objecting to the scope of the state's rebuttal, claiming that some or all of it was redundant to its case-in-chief. (Appellant's brief, pp. 35-36.) Meister has failed to show that such lack of objection rises to the level of violating the Sixth Amendment.

Next Meister claims his counsel was ineffective for not objecting to the prosecutor's argument that Meister tailored his testimony to fit that of his expert. (Appellant's brief, pp. 36-37.) Meister contends the prosecutor's argument was "false" based on his claims of what the first and second transcripts say. (Appellant's brief, p. 37 (citing Meister's "detailed comparison of the 2011 and 2003 transcripts" (R., vol. 18, pp.

3932-35).) The prosecutor's argument, however, was based on the evidence. The prosecutor cross-examined Meister extensively about his assertion his confession to police was false, relying heavily on differences in his prior testimony and his current testimony regarding the police interrogation. (R., vol. 15, pp. 3238-53.) The prosecutor also used other recorded statements Meister made to undercut his claims he falsely confessed because he felt overwhelmed. (R., vol. 15, pp. 3261-64.) Meister's argument shows no error by the district court.

Meister next argues that trial counsel was ineffective for failing to "object to the State's introduction of evidence that suggested Mr. Meister possessed criminal tendencies." (Appellant's brief, pp. 37-38.) The flaw in Meister's contentions is readily apparent. He claims that his attorney should have objected to certain testimony by Duane Scott (Appellant's brief, p. 38 (citing R., vol. 13, pp. 2802-03)), but does not contend the prosecutor asked an improper question. The questions that led to the challenged evidence were, respectively, "You didn't tell Sergeant Aston about this exchange you had with David Meister following Tonya Hart's murder, did you, about him saying that he did it?" and "And what—why were you talking with Detective Besst?" (R., vol. 13, pp. 2802-03 (Tr., p. 1759, Ls. 17-19; Tr., p. 1763, Ls. 3-4).) The questions were not objectionable, and therefore no ineffective assistance of counsel claims could flow from lack of an objection. As to whether the non-responsive answers could have been objected to, counsel could have moved to strike them after the jury heard them, but Meister has failed to show any objective shortcoming in counsel's decision not to call more attention to them.

Meister contends his counsel was ineffective for not objecting to questions regarding whether Meister performed tattoos in prison. (Appellant's brief, p. 38-39.) He

argues this evidence was "character evidence of a general disregard for rule of law." (Id. at 38.) The state is unaware of any law prohibiting tattooing, in or out of prison. See I.C. § 18-1523(2) (prohibiting tattooing of minors under the age of 14). Evidence that Meister was a tattoo artist was prevalent at trial, including in his direct examination. (See, e.g., R., vol. 15, pp. 3083-85, 3089, 3091-92, 3144-46, 3210.) Meister has failed to show that he presented a prima facie claim of deficient performance or prejudice.

Finally, Meister asserts his counsel was ineffective for not objecting to an argument that he claims told the jury that Meister "has and enjoys benefits he does not deserve" because "he killed Ms. Hart without giving her the courtesy of the same due process he now received." (Appellant's brief, pp. 39-40.) This reading of the argument is, at a minimum, a stretch. The prosecutor specifically stated that the due process rights of a defendant are "what we in our society want" and specifically asked for a conviction because "that's what the evidence compels you to do." (R., vol. 16, p. 3419 (Tr., p. 4015, L. 16 – p. 4016, L. 7).) The prosecutor did not argue that Meister did not deserve a fair trial because he did not give a fair trial to his victim. Even if the argument was in some way objectionable, however, Meister has presented no evidence suggesting that counsel's decision to not object was based on any objective shortcoming or that Meister was prejudiced.

Meister's argument that there was "no reasonable trial strategy for defense counsel to acquiesce in the many examples of prosecutorial misconduct described above" (Appellant's brief, p. 42) fails because the objections he claims should have been asserted are meritless or trivial. Even if colorable objections could have been raised, whether to raise them was squarely within the realm of counsel's tactical considerations. Furthermore,

Meister's claim the district court applied an incorrect prejudice standard (Appellant's brief, p. 42) is irrelevant because this Court applies the "same standards" as employed in the trial court. McKinney v. State, 162 Idaho 286, 396 P.3d 1168, 1176 (2017) (internal quotation omitted). Even if the trial court had employed an incorrect prejudice standard (a claim the state denies) such does not excuse the complete lack of evidence of prejudice.

4. In claim 33 Meister alleged his trial counsel were ineffective for introducing "improper and prejudicial character evidence" against him in the form of statements to officers that Meister had a "sick sense of humor." (R., vol. 16, pp. 3521-22; see also R., vol. 18, pp. 3949-50.) The district court dismissed this claim for lack of evidence of either deficient performance or prejudice. (R., vol. 21, pp. 4468-69.)

The record supports the district court's ruling. At trial the defense objected to witness Duane Scott testifying about Meister "telling sick sex jokes and laughing or joking about people killing people." (R., vol. 13, p. 2795 (Tr., p. 1731, Ls. 9-25).) Trial counsel did not have a problem with evidence "couched in terms of being a controversial joke," and understood the state was entitled to get into the matter of "why certain things weren't reported earlier." (R., vol. 13, p. 2795 (Tr., p. 1732, Ls. 5-21).) Scott testified that two days after the murder he and Meister discussed it, and Meister asked "what would you say if I told you I did it?" (R., vol. 13, p. 2801 (Tr., p. 1756, L. 2 – p. 1757, L. 4).) Scott was unsure if the comment was an inappropriate joke at the time, and therefore did not disclose the statement to police when interviewed. (R., vol. 13, pp. 2801-02 (Tr., p. 1757, L. 5 – p. 1761, L. 17).) Later in the trial defense counsel went through Scott's statements to an officer in detail, including that Meister had a "sick sense of humor" and would "talk and laugh about things that were gory, bloody or inappropriate to a conversation," but also that

"Scott told me he didn't recall Meister talking about Hart at all." (R., vol. 13, pp. 2821-22 (Tr., p. 1835, L. 14 – p. 1841, L. 5).) The record shows that trial counsel reasonably addressed evidence of Meister's sense of humor and penchant for gory or inappropriate conversation in the context of Scott's testimony that Meister had made an incriminating statement and why Scott had not disclosed that statement to law enforcement.

Meister claims admission of the evidence "served no defense strategy" and "served no tactical purpose." (Appellant's brief, p. 46.) He does not, however, point to any evidence in the record supporting this argument and simply ignores the context which suggests that trial counsel in fact addressed the evidence in the context of trying to discredit Scott's explanation for his failure to disclose the statement he claimed Meister made.

5. Finally, the district court dismissed claims 34-43, claiming that trial counsel should have introduced certain evidence to show the details of his confession were not true, because there was no evidence of objective deficiency in counsel's strategic decisions and no evidence of prejudice. (R., vol. 21, pp. 4469-70.) "The Petitioner's assertions do not raise a genuine issue of material fact that counsel's tactical decisions fell below an objective standard of reasonableness or that they were based on lack of preparation or ignorance of the law." (R., vol. 21, p. 4469.) Moreover, there was not prejudice because of the "overwhelming evidence of guilt in this case." (R., pp. 4469-70.)

On appeal Meister argues that claims 34-39 and 41 were wrongly dismissed. (Appellant's brief, pp. 10-22.) He contends the decision to challenge the confession was "a sound strategical decision" but the defense was not presented "reasonably and competently." (Appellant's brief, p. 20 (internal quotes omitted).) This argument does not address the district court's holding. Trial counsel's "decision of what evidence should be

introduced at trial is … tactical." State v. Yakovac, 145 Idaho 437, 447, 180 P.3d 476, 486 (2008). "The decision of what witnesses to call is an area where we will not second guess counsel without evidence of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation." State v. Payne, 146 Idaho 548, 563, 199 P.3d 123, 138 (2008). The district court concluded Meister presented no evidence suggesting an objective shortcoming by counsel in choosing what evidence and testimony to present and Meister has not argued otherwise.

Meister also argues that the district court engaged in "inappropriate speculation" that counsel's choices regarding evidence were tactical. (Appellant's brief, p. 21.) Again, Meister's argument fails as a matter of law. "A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." Harrington v. Richter, 562 U.S. 86, 104 (2011) (quoting Strickland v. Washington, 466 U.S. 668, 689 (1984)). The trial court applied the correct legal standard.

Finally, Meister states that the district court's decision on prejudice was wrong. (Appellant's brief, pp. 21-22 (citing R., vol. 18, pp. 3781-98 (comparing Court of Appeals' statement of facts, which omitted Meister's confession because that was challenged on appeal, with Meister's claims)).) He has done nothing to show it, however.

The district court summarily dismissed Meister's claims of ineffective assistance of counsel for lack of evidence of deficient performance and prejudice. Meister has failed to show error.

III.
Meister Has Shown No Error In The Dismissal Of His Claim Related To The Rulings On The Admissibility Of Dr. Ofshe's Testimony

Meister alleged the district court erred in the criminal trial by ruling inadmissible certain areas of proposed testimony by Dr. Ofshe, Meister's false confession expert. (R., vol. 16, p. 3525.) The district court dismissed this claim as "previously raised and considered on appeal." (R., vol. 21, p. 4470 (citing Hall v. State, 126 Idaho 449, 452, 885 P.2d 1165, 1168 (Ct. App. 1994) ("An issue previously raised and considered on appeal need not be reconsidered in an application for post-conviction relief.")).) Meister argues the district court erred because the Court of Appeals decided the case on the basis of harmless error and never addressed a claim of a due process violation from exclusion of the evidence. (Appellant's brief, pp. 47-50.) This argument overlooks the fact that the Court of Appeals' determination that the error, if any, was harmless is still binding.

IV.
Meister Has Shown No Error In The Dismissal Of His Claim Related To Whether The Jury Room Was Sufficiently Sound-Proofed

A. Introduction

Meister claimed the jury room "was not sufficiently insulated from sound generated within the courtroom allowing the jury when absent from the courtroom to nonetheless hear the proceedings from which the jurors had been excused." (R., vol. 16, pp. 3525-26.) The district court dismissed this claim for lack of supporting evidence. (R., vol. 21, p. 4470.) Meister contends he did provide sufficient evidence, in the form of Meister's factual claims, an affidavit, and a matter on the record of the criminal trial. (Appellant's brief, p. 52.) Review of the record in light of applicable law shows no error by the district court.

B. Standard Of Review

On appeal from summary dismissal of a post-conviction petition, the appellate court "will determine whether a genuine issue of fact exists based on the pleadings, depositions and admissions together with any affidavits on file and will liberally construe the facts and reasonable inferences in favor of the non-moving party." Kelly v. State, 149 Idaho 517, 521, 236 P.3d 1277, 1281 (2010).

C. Meister Did Not Present Evidence To Establish A Prima Facie Claim That The Jury Heard Inadmissible Evidence

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief, in response to a party's motion or on the court's own initiative, if the applicant "has not presented evidence making a prima facie case as to each essential element of the claims upon which the applicant bears the burden of proof." Berg v. State, 131 Idaho 517, 518, 960 P.2d 738, 739 (1998). Until controverted by the state, allegations in a verified post-conviction application are, for purposes of determining whether to hold an evidentiary hearing, deemed true. Cooper v. State, 96 Idaho 542, 545, 531 P.2d 1187, 1190 (1975). However, the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law. Ferrier v. State, 135 Idaho 797, 799, 25 P.3d 110, 112 (2001); Roman v. State, 125 Idaho 644, 647, 873 P.2d 898, 901 (Ct. App. 1994).

Review of the evidence Meister submitted in support of his claim shows he did not establish a prima facie claim of any violation of his rights. Meister supported this claim with three things: (1) his own statement that (a) he had been in the jury room at some unspecified time and "could clearly hear through the closed doors the voices of the

presiding judge and counsel in attendance" and (b) that in the 2003 trial he could hear the jury play the recording of his confession while in the courtroom (R., vol. 19, p. 4005); (2) a citation to the trial transcript where, during the 2011 trial, the prosecutor requested that the volume of a recording being played outside the presence of the jury be lowered (R., vol. 19, pp. 4005-06; R., vol. 14, pp. 2947-48 (Tr., p. 2339, L. 25 – p. 2342, L. 5)); and (3) an affidavit of Margaret Lynn Aldridge stating that she attended the 2003 trial and "[f]rom the spectator's area of Courtroom Three where I was seated I could clearly hear through the shut doors of the jury room that the jury was listening to the audio recording of David Meister's confession to police that was an exhibit at trial" (R., vol. 17, pp. 3602-03). The district court's determination that this evidence was bare and conclusory was correct.

On appeal Meister argues that the evidence was admissible and relevant. (Appellant's brief, pp. 52-53.) This argument merely begs the question of whether, after considering the evidence, it was still speculative that the jury in the 2011 trial in fact heard inadmissible evidence.[4]

Meister next argues that evidence of events in 2003 show what happened in 2011 because "[t]here is no evidence that in the interval of eight years the jury room was soundproofed." (Appellant's brief, p. 53.) In addition to the misconception of who had

[4] Meister's claim that the jury hearing inadmissible evidence is a structural error is without merit. In Arizona v. Fulminante, 499 U.S. 279, 306-12 (1991) (cited at Appellant's brief, p. 51), the Supreme Court of the United States held that "admission of an involuntary confession" was "a classic 'trial error'" and therefore subject to harmless-error analysis. The jurors being inadvertently exposed to inadmissible evidence as it was discussed in court was no less a trial error subject to harmless error analysis. However, which legal standard would apply if the jurors did hear inadmissible evidence discussed in court proceedings from which they were excluded is not relevant to this case where the district court deemed the evidence that the jurors did in fact overhear those proceedings speculative.

the burden of presenting evidence to avoid summary dismissal, this argument misses the point that, even with the evidence of events in 2003, whether the jury in the relevant case heard and considered matters not meant for it was still speculative.

Meister also argues that there was evidence that the jury heard inadmissible evidence in 2011 because the prosecutor "expressed in open court during trial that she feared the excused jury could overhear a defense audio recording exhibit which was being played on proffer." (Appellant's brief, p. 53.) The actual exchange was as follows:

> MS. EVANS: Your Honor, could we have it turned down just a little?
> THE COURT: Probably should.

(R., p. 2948 (Tr., p. 2342, Ls. 1-3).) Even giving this exchange Meister's dubiously expansive reading it shows nothing more than a concern that there was a risk the jury would overhear recordings played at a sufficient volume. It does not render the claim that the jury overheard and considered inadmissible evidence non-speculative.

The evidence Meister presented did not constitute a prima facie showing that the jury heard and considered inadmissible evidence. He has shown no error in the summary dismissal of this claim.

V.
Meister Has Shown No Cumulative Error

Meister alleged cumulative error. (R., vol. 16, p. 3526.) The district court denied this claim because "Petitioner failed to show error occurred." (R., vol. 21, pp. 4470-71.) For the reasons stated above, Meister has failed to show error in the dismissal of this claim.

VI.
Meister Has Shown No Error In The District Court's Denial Of Discovery

A. Introduction

Meister moved for permission to conduct discovery "in order to obtain evidence to defend against summary dismissal." (R., vol. 17, pp. 3599-3601; see also pp. 3667-69; pp. 3683-84; pp. 3744-49; R., vol. 18, pp. 3750, 3760.) The district court denied the motion because the requests were "overly broad and nothing requested would lead to evidence which would protect a substantial right of the Petitioner." (R., vol. 21, p. 4471.)

On appeal Meister claims the district court should have ordered the depositions of four of his co-workers regarding their statements to the police; a Moscow Police Department officer with knowledge of the records regarding patrols at the time of the murder; a witness who gave the police a statement that he had seen no discarded clothes in an area Meister claimed he traversed while fleeing the murder; a representative of the company who issued Linderman's pager; and another person to whom Meister claimed Lane Thomas confessed to. (Appellant's brief, pp. 56-60.) Meister also claims his private investigator should have been granted access to the courtroom and jury room to conduct tests on what the jury heard at trial. (Appellant's brief, p. 60.) Meister's arguments are without merit.

B. Standard Of Review

Discovery during post-conviction relief proceedings is a matter put to the sound discretion of the district court. I.C.R. 57(b); Raudebaugh v. State, 135 Idaho 602, 605, 21 P.3d 924, 927 (2001) (citing Fairchild v. State, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996)). On review, the appellate court must determine whether the district court

"acted within the boundaries of its discretion, consistent with any legal standards applicable to its specific choices, and whether the court reached its decision by an exercise of reason." State v. Lafferty, 125 Idaho 378, 381, 870 P.2d 1337, 1340 (Ct. App. 1994).

C. Meister Has Not Demonstrated That The District Court Abused Its Discretion

Idaho Criminal Rule 57(b) provides that, "the provisions for discovery in the Idaho Rules of Civil Procedure shall not apply to the [post-conviction relief] proceedings unless and only to the extent ordered by the trial court." Idaho Criminal Rule 57(f) limits discovery to prevent the state and the court from being inundated with discovery requests by applicants who are either unaware of proper methods or are simply on fishing expeditions. The Idaho courts have recognized that traditional discovery methods, normally applicable to civil cases, might be inappropriate in collateral proceedings. Jacobsen v. State, 99 Idaho 45, 50, 577 P.2d 24, 29 (1978); Aeschliman v. State, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999). In Raudebaugh, the Idaho Supreme Court explained, "Unless discovery is necessary to protect an applicant's substantial rights, the district court is not required to order discovery." Raudebaugh, 135 Idaho at 605, 21 P.3d at 927.

Further, "[i]n order to be granted discovery, a post-conviction applicant must identify the specific subject matter where discovery is requested and why discovery as to those matters is necessary to his or her application." State v. LePage, 138 Idaho 803, 810, 69 P.3d 1064, 1071 (Ct. App. 2003) (citing Aeschliman, 132 Idaho at 402-03, 973 P.2d at 754-55).

Meister argues he should have been able to conduct the depositions because the testimony he hoped to elicit was "relevant" to his claims. (Appellant's brief, pp. 58-60.) His naked claims of relevance are insufficient to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm the dismissal of Meister's petition for post-conviction relief.

DATED this 2nd day of February, 2018.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 2nd day of February, 2018, served two true and correct paper copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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KKJ/dd